



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201302047

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

OCT 17 2012

T: EP: RA: T3

U.I.L. 408.03-00

XXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX

Legend:

Taxpayer A = XXXXXXXXXXXXXXXXXXXXX

IRA X = XXXXXXXXXXXXXXXXXXXXX

Amount B = XXXXXXXXXXXXXXXXXXXXX

Account C = XXXXXXXXXXXXXXXXXXXXX

Company P = XXXXXXXXXXXXXXXXXXXXX

Bank D = XXXXXXXXXXXXXXXXXXXXX

Date 1 = XXXXXXXXXXXXXXXXXXXXX

Date 2 = XXXXXXXXXXXXXXXXXXXXX

Date 3 = XXXXXXXXXXXXXXXXXXXXX

Dear xxxxxxxxxx:

This letter is in response to your request dated xxxxxxxxxxxxxxxx, as supplemented by correspondence dated xxxxxxxxxxxx, and xxxxxxxxxxx, in which you request a waiver of the 60 day rollover requirement contained in section 408(d)(3) of the Internal Revenue Code (the Code).

The following facts and representations have been submitted under penalty of perjury in support of your request.

Taxpayer A represents that on Date 1 he received a distribution of shares of stock valued at Amount B from IRA X maintained by Company P intending to roll them back into IRA X within 60 days. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by section 408(d)(3) of the Code was due to the failure of Company P to follow his specific instructions to return shares of stock into IRA X within 60 days of Date 1.

Prior to Date 1, Taxpayer A applied for a home loan with Bank D. Bank D required him to have, at the time of closing, ten percent liquidity of the purchase price in a non-retirement fund account.

On Date 1, upon the advice of Bank D, Taxpayer A called Company P's representative to temporarily transfer shares of stock valued at Amount B from IRA X to Account C his individual brokerage account with Company P. During this conversation he told Company P's representative that it was imperative that the stock be transferred back into IRA X within 60 days.

Within the 60-day rollover period, on Date 2, Taxpayer A closed the mortgage loan with Bank D. At that time the transfer of the stock could have been returned to IRA X. However, Taxpayer A believed that he had already instructed Company P to return the stock to IRA X, so he did not contact Company P during the 60-day period.

Taxpayer A relied upon Company P's representative to transfer the stock back into IRA X within 60 days of Date 1, but when he checked his account on line on Date 3, seventeen (17) days after the 60 day rollover period, he discovered that the stock had not been transferred back into IRA X as he thought he had instructed.

Documentation submitted by Company P indicates that Company P's representative did not execute the transfer because he was waiting for further instructions from Taxpayer A.

Based upon the foregoing facts and representations, you request that the Internal Revenue Service waive the 60 day rollover requirement contained in section 408(d)(3) of the Code with respect to the distribution of stock valued at Amount B from IRA X.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if-

- (i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60<sup>th</sup> day after the day on which the individual received the payment or distribution; or
- (ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60<sup>th</sup> day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not included in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(E) of the Code provides that the rollover provisions of section 408(d)(3) do not apply to any amount required to be distributed under section 408(a)(6).

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity and good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R. B. 359, provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 408(d)(3)(I), the Service will consider all relevant facts and circumstances, including : (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, or hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information presented and documentation submitted by Taxpayer A is consistent with his assertion that his failure to accomplish a timely rollover was due to the failure of Company P to follow his specific instructions to return shares of stock into IRA X within 60 days.

Therefore, pursuant to section 408(d)(3)(I) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distribution of stock valued at Amount B from IRA X. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute stock valued at Amount B from Account C to IRA X. Provided all other requirements of Code section 408(d)(3), except the 60-day requirement, are met with respect to such contribution, stock valued at Amount B will be considered a rollover contribution within the meaning of section 408(d)(3) of the Code.

This ruling does not authorize the rollover of amounts that are required to be distributed by section 401(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transactions described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

If you have any questions concerning this ruling, please contact xxxxxxxxxxxxxxxx, SE: T: EP: RA: T3, at xxxxxxxxxxxxxx.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Laura B. Warshawsky", with a long horizontal flourish extending to the right.

Laura B. Warshawsky, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling  
Notice 437